No. 14,926

IN THE

United States Court of Appeals

For the Ninth Circuit

PACIFIC FREIGHT LINES and SIDNEY S. RUSSELL,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

On Appeal from the United States District Court for the Southern District of California, Central Division.

APPELLANTS' OPENING BRIEF.

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On Appeal from the United States District Court for the Southern District of California, Central Division.

APPELLANTS' OPENING BRIEF.

JURISDICTIONAL STATEMENT.

Appellants brought suit (R. 8) against the United States under the Federal Tort Claims Act, 28 U.S.C. 1348(b), 2671 et seq., in the United States District Court for the Southern District of California, Central Division. The case was tried without a jury before Honorable Leon R. Yankwich, Judge Presiding, whose memorandum opinion is reported at ....F. Supp .... Judgment for United States was entered on the 6th day of May, 1955. (R. 21.) Notice of appeal was filed by appellants on the 27th day of May, 1955. (R.

22.) The jurisdiction of this Court is invoked under 28 U.S.C. 1291.

STATUTES INVOLVED.

Sections 1346(b), 2674, and 2671 of Title 28 U.S.C. (the reenactment of the Federal Tort Claims Act, 62 Stat. 933, 982, 983) provide in pertinent part:

> "Section 1346. United States as defendant.
>
> * * * * * *
>
> "(b) Subject to the provisions of chapter 171 of this title, the district courts * * * shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January, 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.
>
> * * * * * *
>
> "Section 2674. Liability of United States.
> The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.
>
> * * * * * *
>
> "Section 2671. Definitions.
> As used in this chapter and sections 1346(b) and 2401(b) of this title, the term—
>
> * * * * * * *

"Employee of the government includes officers or employees of any federal agency, members of the military or naval forces of the United States, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation.

"Acting within the scope of his office or employment, in the case of a member of the military or naval forces of the United States, means acting in line of duty."

STATEMENT OF THE CASE.

This is an appeal by plaintiffs-appellants from a judgment for defendant-appellee, the United States. This action was brought by plaintiff, Pacific Freight Lines for property damage and by plaintiff Sidney S. Russell for damages for personal injuries, arising out of a collision between a vehicle driven by plaintiff Russell and owned by plaintiff Pacific Freight Lines and a vehicle owned by defendant United States of America and driven by Eugene A. Phelps, a member of the United States Air Force. Judgment was rendered in favor of plaintiff Pacific Freight Lines in the sum of $4,264.07 and in favor of plaintiff Russell in the sum of $1,668.66 against defendant Phelps and in favor of the defendant United States and against the plaintiffs.

The sole issue herein is whether Eugene A. Phelps was acting within the scope of his office or employment at the time of the collision.

Defendant Eugene A. Phelps was at the time of the collision stationed at George Air Force Base, Victorville, California, and was employed as a driver in the motor pool there. (R. 14 [Findings of Fact I].) Defendant Phelps negligently caused the vehicle he was driving to cross over the center line where it collided with plaintiff-appellants' truck.

The collision occurred between 5:00 and 5:30 a.m. on U.S. Highway 66 at a point approximately 25 miles east of the point on U.S. Highway 66, where said highway is intersected by the road to George Air Force Base. (Finding XV; R. 16.)

At the time of the collision defendant Phelps was driving the vehicle of defendant United States in a general westerly direction (R. 31) while plaintiff Russell was driving plaintiff Pacific Freight Lines' vehicle proceeding in a general easterly direction. (R. 25, 31.)

On February 5, 1954, and for some time prior thereto the motor pool at George Air Force Base was short of personnel; this shortage included drivers. (R. 58, 61, 90.) The drivers assigned to the pool were driving for longer periods of time than reasonable. (R. 61.) On February 4 defendant Phelps had gone to work

at 7:30 a.m. after having had only four hours sleep. (R. 88.) On February 3, defendant Phelps had gone to work at 7:30 a.m. and worked until 2:00 a.m. on February 4. (R. 87.)

At approximately 3:00 p.m. on February 4, defendant Phelps was ordered to drive an Air Force officer from George Air Force Base to Los Angeles (R. 14 [Finding II]). Defendant Phelps was issued a driver's trip ticket, DD form 110 (Defendant's Exhibit A) in evidence. (R. 55-56.) Air Force personnel who are dispatched with a vehicle and trip ticket are on duty. (R. 42-43.) A trip ticket does not designate the route to be taken. (R. 43.) No order was given to defendant Phelps designating the time at which he was to return to the base. (R. 44.) Return times for drivers of the motor pool at George Air Force Base are not checked too closely. (R. 47, 48.) Defendant Phelps understood that after delivering his passenger he was to return immediately to George Air Force Base. (R. 68.) It was his duty to do so. (R. 43.) It is, however, the practice of the motor pool to allow a driver away from the base to take time out for meals. (R. 48.) It is also the practice of this motor pool to allow a driver, when he becomes sleepy on trips, to pull his car into a place of safety to sleep and to return to the base after he has rested. (R. 91.) It is also the practice of those in charge of the motor pool to accept at face value a driver's explanation of a late return to the base. (R. 91.) The drivers in the motor pool are not allowed to entrust the vehicle to anyone else.

Defendant Phelps had been assigned to drive an officer to Los Angeles; Los Angeles is approximately 115 miles west of George Air Force Base (R. 14 [Finding III]). Defendant Phelps delivered his passenger to the Biltmore Hotel in Los Angeles at approximately 6:00 p.m. on February 4 and began his return trip (R. 15 [Finding V]). He stopped in Pasadena, at approximately 7:00 p.m. for his dinner. (R. 15 [Finding VI].) He later stopped at a cafe in San Bernardino. He left there at approximately midnight and continued upon his return trip. (R. 15 [Finding VIII].) Before leaving the cafe, however, he declared to an acquaintance he met there his intention to return to the base. (R. 98.) Defendant Phelps was very tired. (R. 80.) At the junction of U. S. Highways 395 and 66 defendant Phelps picked up a hitchhiker in uniform and who was either in the Army or the Marine Corps. (R. 82-83.) Defendant Phelps asked the hitchhiker to drive the car. (R. 16 [Finding X].) Defendant Phelps, called by the defendant United States as its own witness (R. 65-66), testified that he asked the hitchhiker to drive to Victorville and to wake him up when they got to Victorville (R. 80, 85). Defendant Phelps was having engine trouble. (R. 52, 54, 85.) He told the hitchhiker not to drive it too fast. (R. 85.) The hitchhiker drove the car in an easterly direction on U.S. Highway 66 and defendant Phelps went to sleep. (R. 16 [Findings X and XI].) When defendant Phelps woke up he was in Barstow. It was 5:00 a.m. and he was 35 miles beyond the point he was to have turned off U.S. Highway 66 to return to

George Air Force Base. He immediately proceeded to drive toward the Air Force Base. (R. 81, 91.) The collision occurred when he was approximately 25 miles short of his destination, George Air Force Base. (R. 16-17 [Finding XV].)

SPECIFICATION OF ERRORS.

(1) The trial Court erred in failing to conclude as a matter of law that Eugene A. Phelps was acting within the course and scope of his office or employment.

(2) The Court erred in finding that defendant Eugene A. Phelps was not acting within the scope of his office or employment at the time of the collision.

(3) The Court erred in its failure to conclude as a matter of law that the conduct of the hitchhiker in driving the vehicle of defendant United States to Barstow, California, was chargeable to defendant United States.

(4) The Court erred in its conclusion of law III that defendant United States of America is intitled to a judgment against the plaintiffs Pacific Freight Lines and Sidney S. Russell and each of them and in dismissing their complaint.

SUMMARY OF ARGUMENT.

This case is controlled by the California doctrine of respondeat superior.

Defendant Phelps having been carried off his course by the hitchhiker against his will and while he was asleep never departed nor deviated from the course and scope of his employment. There is no evidence to sustain a finding that defendant Phelps departed from or was acting outside the scope of his office or employment.

The trial Court erred in its failure to conclude that as a matter of law the conduct of the hitchhiker was chargeable to defendant United States. The California authorities compel the conclusion that the conduct of the hitchhiker in driving the car of defendant United States beyond the area of defendant Phelps' course are chargeable to defendant United States. Under California law, an agent in charge of an instrumentality of his master retains custody when the third party to whom he has transferred its possession acts in the person of the agent and the master is liable for the acts of the transferree.

Since the only issue is whether defendant Phelps was acting within the scope of his office or employment, and since the only evidence on the issue came from the witnesses of defendant United States and is uncontradicted, this Court can and should determine the issue in appellants' favor and direct entry of judgment against the defendant United States and in favor of appellants.

ARGUMENT.

I.

THIS CASE IS CONTROLLED BY THE CALIFORNIA LAW OF RESPONDEAT SUPERIOR.

Prior to the per curiam opinion of the United States Supreme Court in Williams v. United States, ... U.S. ...., filed October 17, 1955, there was some doubt whether Federal law or the law of the place controlled the determination of whether a member of the Armed Forces of the United States was acting in the course and scope of his employment. See *Williams v. United States* (9 Cir. 1954), 215 F. 2d 800 and *United States v. Campbell* (5 Cir. 1949), 172 F. 2d 500. This doubt, occasioned by the apparent inconsistency between the provisions of Sections 1346(b) and 2671 of Title 28 U.S.C., was resolved by the Supreme Court in the *Williams* case. The United States Supreme Court there held that the question is controlled by the law of the place.

II.

THE COURT ERRED IN FAILING TO CONCLUDE AS A MATTER OF LAW THAT DEFENDANT PHELPS WAS ACTING WITHIN THE SCOPE OF HIS OFFICE OR EMPLOYMENT.

Defendant Phelps was driving a vehicle owned by defendant United States. He was on duty. He allowed another to drive the vehicle. While asleep he was carried outside the authorized space limits of that duty. When he awoke he immediately entered upon the return to the authorized space limits of his duty.

The factors to which this Court must look to determine whether Phelps was acting in the course and scope of his employment as set forth in Section 228 of the Restatement of Agency are in accord with the California authorities.

RESTATEMENT OF AGENCY

§ 228. *General Statement.*

(1) Conduct of a servant is within the scope of employment if, but only if:

(a) it is of the kind he is employed to perform, as stated in § 229;

(b) it occurs substantially within the authorized time and space limits, as stated in §§ 233-234; and

(c) it is actuated, at least in part, by a purpose to serve the master, as stated in §§ 235-236.

(2) It is a question of fact, depending upon the extent of departure, whether or not an act, as performed in its setting of time and place, is so different in kind from that authorized, or has so little relation to the employment, that it is not within its scope.

Loper v. Morrison, 23 C. 2d 600, 605 (145 P. 2d 1):

"In each case involving scope of employment all of the relevant circumstances must be considered and weighed in relation to one another. Under these authorities the factors to be considered, insofar as pertinent to this case, are the intent of the employee, the nature, time, and place of his conduct, his actual and implied authority, the work he was hired to do, the incidental acts that

> the employer should reasonably have expected would be done, and the amount of freedom allowed the employee in performing his duties. (Authorities.)"

Undue emphasis should not be placed upon any one of these factors. Restatement of Agency, Section 228, Comment (b):

> ". . . Where a servant is acting close to, although not within, the authorized place or time, or where the act is similar to one authorized, all the facts must be considered to determine responsibility for his conduct, both as bearing upon the question of whether or not his conduct is sufficiently near to that authorized to cause the master to be subject to liability, and upon the question of whether or not in absence of specific evidence of the purposes of the servant he has the purpose of acting within the employment."

Phelps was doing the job he was employed to perform. Phelps' sole purpose was to return the car to the George Air Force Base. The trial judge placed undue emphasis upon the time and space limits. It is not disputed that Phelps was outside the authorized time and space limits of his duty. Nor is it disputed that Phelps was without authority to be there. These facts, by themselves, do not place Phelps outside the scope of his employment. During all this time Phelps was subject to the control of the defendant United States and though the claimed departure was without express authority, it was not such as would relieve

defendant United States of responsibility for his actions. Section 229, Restatement of Agency:

"§ 229. *Kind of Conduct Within Scope of Employment*

(1) To be within the scope of the employment, conduct must be of the same general nature as that authorized, or incidental to the conduct authorized.

(2) In determining whether or not the conduct, although not authorized, is nevertheless so similar to or incidental to the conduct authorized as to be within the scope of employment, the following matters of fact are to be considered:

(a) whether or not the act is one commonly done by such servants;

(b) the time, place and purpose of the act;

(c) the previous relations between the master and the servant;

(d) the extent to which the business of the master is apportioned between different servants;

(e) whether the act is outside the enterprise of the master or, if within the enterprise, has not been entrusted to any servant;

(f) whether or not the master has reason to expect that such an act will be done;

(g) the similarity in quality of the act done to the act authorized;

(h) whether or not the instrumentality by which the harm is done has been furnished by the master to the servant;

(i) the extent of departure from the normal method of accomplishing an authorized result; and

(j) whether or not the act is seriously criminal."

Lowe v. United States, 83 F. Supp. 128.

One could not seriously question the fact that the act of entrusting the driving of cars owned by defendant United States is one often done by persons driving those cars. Nor can one seriously question the fact that such drivers take said cars outside the time and place limitations of their duty.

That Phelps was acting for the purposes of the defendant United States, in whole or in part, was established by the uncontradicted evidence in this case. See Restatement of Agency, Section 236:

> "*Conduct Actuated by Dual Purpose.*
>
> An act may be within the scope of employment, although done in part to serve the purposes of the servant or of a third person.
>
> (a) Although a person cannot, by the same act, properly serve two masters whose wills are opposed, he may, as stated in § 226, serve two masters both of whom are interested in the performance of the same act. The rule stated in this section, however, goes beyond that situation and includes one in which the servant, although performing his employer's work, is at the same time accomplishing his own objects or those of a third person which conflict with those of the master. This is true not only as to the act done but as to the manner of doing it.

> (b) The fact that the predominant motive of the servant is to benefit himself or a third person does not prevent the act from being within the scope of employment. If the purpose of serving the master's business actuates the servant to any appreciable extent, the master is subject to liability if the act otherwise is within the service, as where the servant drives rapidly, partly to deliver his master's goods, but chiefly in order that he may terminate his day's work or to return the vehicle to the master's premises. So also, the act may be found to be in the service where not only the manner of acting but the act itself is done largely for the servant's purposes. Thus, where the servant desires to make a brief detour of his own and for the purpose of expediting such trip places the employer's goods by the roadside, intending to pick them up later, the act of so placing them may be found to be within the scope of employment."

The uncontradicted evidence establishes that the previous operation of the motor pool and the supervision of its drivers lent itself to the creation of the situation presented by this record.

The uncontradicted evidence clearly establishes that defendant United States had adequate reason to expect the conduct of defendant Phelps.

Phelps' act was not seriously criminal.

III.

THE FINDING THAT DEFENDANT PHELPS WAS NOT ACTING WITHIN THE COURSE AND SCOPE OF HIS EMPLOYMENT AT THE TIME OF THE COLLISION IS NOT BASED ON SUBSTANTIAL EVIDENCE.

The focal point of judicial review is the reasonableness of the particular inference or conclusion drawn by the trier of fact. *Tennant v. Peoria and P. U. Ry. Co.,* 321 U.S. 29, 64 S.Ct. 409.

It is appellant's position that there is no evidence in the record from which it can reasonably be inferred that Phelps consented to the driving of the vehicle beyond the turn-off point. The facts proven were that defendant Phelps picked up a hitchhiker; that the hitchhiker was a member of the Armed Services; that he was allowed to drive the car; that the car was driven to Barstow by said hitchhiker. Is it reasonable to infer from these facts that Phelps told the hitchhiker that he might drive the car to Barstow? The answer is "No".

At what point in the chain of events revealed by Phelps' testimony can it be said that he took himself beyond the scope of his office or employment? It must be conceded that he was within the scope of his employment at the time he turned the operation of the vehicle over to the hitchhiker. It is apparent from the comments of the trial judge (R. 101) that he concluded that the entrusting of the vehicle to the hitchhiker took Phelps outside the scope of his employment. That conclusion is contrary to the California law of respondeat superior and is error. See point

IV, infra. It must also be conceded that he was within the scope of his office or employment at the time he went to sleep. Certainly the act of going to sleep did not constitute a departure from his employment. *Gates v. Daley,* 54 Cal. App. 654 (202 P. 467). From that point on Phelps did not do anything which could be deemed a departure from his employment. The finding that Phelps was not acting within the scope of his office or employment is not only unsupported by substantial evidence, it is contrary to the only evidence on the issue.

IV.

THE CONDUCT OF THE HITCHHIKER IN DRIVING THE VEHICLE OF DEFENDANT UNITED STATES TO BARSTOW, CALIFORNIA IS CHARGEABLE TO DEFENDANT UNITED STATES.

(a) There is no evidence that defendant Phelps authorized the hitchhiker to drive the car beyond the point where defendant Phelps was to have turned off U. S. Highway 66 to return to George Air Force Base.

(b) The Court found upon uncontradicted evidence that defendant Phelps was in charge of a vehicle owned by defendant United States; that defendant Phelps was employed as a driver; and that he delegated the driving of the vehicle to another. The Court further found that after the other began to drive the car defendant Phelps went to sleep.

The conduct of the one to whom Phelps delegated his duties is chargeable to defendant United States.

California authorities are in accord with the general law of agency as enunciated in the Restatement of Agency, Section 241:

> "A master who has entrusted a servant with an instrumentality is subject to liability for harm caused by its negligent management by one to whom the servant entrusts its custody to serve the purposes of the master, if the servant should realize that there is an undue risk that such person will harm others by its management."

Comment (e) under that section sets forth one of the reasons for imposing liability on the master:

> "(e) Where servant remains in control. A servant, while remaining with the instrumentality, may surrender its immediate control to another, as where the driver of a truck permits a boy to drive it. Although such surrender is not negligent, the master remains subject to liability for any negligence of the employee in supervising the conduct of the other. However, in the absence of negligence by his servant, the master is not liable for any casual negligence of the other while under the supervision of the servant."

Comment (b) under Restatement of Agency, Section 81 (dealing with the authority of a servant to delegate his duties) further discusses the basis for the master's liability:

> "Comment (b) If a servant is authorized to substitute another servant of the principal, such substituted servant has power to subject the principal to liability as would any other of the prin-

> cipal's servants. On the other hand, if the servant is not authorized to substitute another for himself, the principal is not subject to liability to third persons for the conduct of such person, unless the agent has been negligent in entrusting an instrumentality of the principal to such person or if, surrendering its immediate control to the other, he retains supervision over him and is negligent in his supervision (see § 241.)"

In *Gates v. Daley,* 54 C.A. 654, 655-656 (202 P. 467), a master was held liable for the negligence of one to whom his servant entrusted the operation of a vehicle. In that case the servant was employed to drive a truck and had no authority to engage another to operate it. While driving the truck in the regular course of his employment, he became fatigued, in order to rest, allowed his wife to drive it. The Court there held:

> "The cases in which masters have been held liable for the negligence of assistants to their regularly employed servants, laying aside those instances in which the servants have engaged the assistants under an express authority conferred by the masters, seem to be divided into two classes: First, those cases in which the assistants committed the acts of negligence in the presence, and, therefore, impliedly, under the direction, of the servants; second, those in which the assistants, although being negligent while working out of the presence of the servants, were engaged in the rendition of services which they had been accustomed to perform at the servants' request for considerable periods of time, thus giving rise

to the view that the servants enjoyed an implied authority to engage them. A fair sample of the first class of cases is *Geiss v. Twin City Taxicab Co.,* 120 Minn. 368 (45 L.R.A. [N.S.] 382, 139 N.W. 611). After referring to several authorities on the subject the supreme court of Minnesota there said: 'We think they support the conclusion that the master is liable when the act is done in the presence of the servant and by his direction, or with his acquiescence, though the person doing the act is not a servant of the master and though the master has not authorized the servant to employ an assistant.' A case of the second class, on the facts stated, is found in the decision of our Supreme Court in *Bank of California v. Western Union Tel. Co.,* 52 Cal. 280, but the opinion there found is practically based upon *Althorf v. Wolfe,* 22 N.Y. 355, a case undoubtedly belonging in the first class. The present case, if the judgment against appellant is to stand, naturally falls in the same classification with *Althorf v. Wolfe* and with *Geiss v. Twin City Taxicab Co.,* supra. By its indorsement and adoption of the doctrine of *Althorf v. Wolfe,* our Supreme Court has aligned itself with the courts of those states whose decisions fall under the group to which that case belongs . . ."

Gates v. Daley, supra, has been consistently followed by the later cases in California. *Gibbons v. Naritoka,* 102 C.A. 669, 673 (283 P. 845); *Malloy v. Fong,* 37 C. 2d 356, 373 (231 P. 2d 241).

The fact that the delegation by Phelps of his duties was without authority is completely immaterial. In

Ruppe v. City of Los Angeles, 186 C. 400, 402 (199 P. 496), it was stated:

> "The rule is elementary that a master is responsible for the acts of his servant done in the course of his employment, even though those acts be unauthorized or contrary to the master's explicit instructions. As between the master and third persons, the act of the servant done as a part of the doing of that which he is employed to do are as if done by the master himself, and the question of authority as between the master and servant to do the particular acts is quite immaterial."

In *Wagnitz v. Scharetg,* 89 C.A. 511, 516-517 (265 P. 318), a case in which a chauffeur violated the express instructions of his employer, it was held:

> "It is well settled that: The owner's liability for the acts of a chauffeur 'is determined when a satisfactory conclusion is reached as to whether at the time in question the servant was acting within the scope of his employment; whether the acts which he was performing were expressly or impliedly authorized by his contract of employment . . . Where the servant acts within the general scope of his authority, notwithstanding the fact that he may be disregarding directions of the employer at the time, the employer may be held liable.' "

Conduct which a master has reason to expect will be done by his servant will be considered within the course and scope of the employment, even though unauthorized. Defendant United States should have

anticipated that Phelps would entrust the driving of the vehicle to another. The undisputed facts are that the motor pool at George Air Force Base was undermanned and that Phelps had driven long hours with little sleep. Section 229 of the Restatement of Agency contemplates such a factual situation.

> "§ 229. Kind of Conduct Within Scope of Employment.
>
> (1) To be within the scope of the employment, conduct must be of the same general nature as that authorized, or incidental to the conduct authorized.
>
> (2) In determining whether or not the conduct, although not authorized, is nevertheless so similar to or incidental to the conduct authorized as to be within the scope of employment, the following matters of fact are to be considered:
>
> (a) . . .
>
> (f) Whether or not the master has reason to expect that such an act will be done;"

The last sentence of Comment (a) to Section 229 suggests the answer to whether defendant United States should be held responsible for the conduct of the hitchhiker:

> "(a) . . . Since the phrase scope of the employment, is used for the purpose of determining the liability of the master for the conduct of servants, the ultimate question is whether or not it is just that the loss resulting from the servant's acts should be considered as one of the normal risks to be borne by the business in which the servant is employed."

The fact that defendant Phelps went to sleep after entrusting the vehicle to the hitchhiker does not relieve defendant United States from responsibility for the hitchhiker's conduct. It is appellant's position that Phelps, by going to sleep, acted negligently in failing to supervise the driving and that such negligence is that of Phelps' principal, defendant United States. Restatement of Agency, Section 81, Comment (b):

> "(b) If a servant is authorized to substitute another servant of the principal, such substituted servant has power to subject the principal to liability as would any other of the principal's servants. On the other hand, if the servant is not authorized to substitute another for himself, the principal is not subject to liability to third persons for the conduct of such person, unless the agent has been negligent in entrusting an instrumentality of the principal to such person or if, surrendering its immediate control to the other, he retains supervision over him and is negligent in his supervision (see § 241)."

The only conclusion that can be reached on the present record is that the defendant United States was responsible for the conduct of the hitchhiker and that this being so, defendant Phelps never departed from the course and scope of his employment.

CONCLUSION.

Since the only issue is whether defendant Phelps was acting within the scope of his office or employ-

ment, and since the only evidence on the issue came from witnesses of the defendant United States and is uncontradicted and since that evidence clearly shows that defendant Phelps, at no time, voluntarily departed from the scope of his office or employment, this Court can, and should, determine the issue in appellants' favor and direct entry of judgment against the defendant United States and in favor of appellants.

Dated, San Francisco, California,
May 2, 1956.

Respectfully submitted,
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